



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/612,172      | 07/01/2003  | Theodore DeWitt Turner |                     | 5215             |

45096 7590 09/29/2005  
STEVEN HOROWITZ, ESQ.  
295 MADISON AVE  
SUITE 700  
NEW YORK, NY 10017

EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/612,172

Applicant(s)

TURNER ET AL.

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-34 is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-13, 17 and 35-44 is/are rejected.
- 7) ☒ Claim(s) 4-6, 14-16 and 45-47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/26/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Information Disclosure Statement***

1. The information disclosure statement filed on 3/26/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document. There is no copy of The United Kingdom Patent No. 1,249,975. Applicant is required to provide a copy of the patent.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, the phrase "said skid-resistant material" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 10, 35 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Atalay (5,209,539). Atalay discloses a carrier/case (1) comprising a first planar leg (9) having at least one first leg pocket (16A, 16B, 40), a second planar leg (10) having at least one second leg

Art Unit: 3728

pocket (16A, 16B, 40) and a spine (20-28) formed from a joinder of a side of the first planar leg and a side of the second planar leg. The carrier/case capable of standing on its two planar legs on the surface when the planar legs are separated so that the legs define a three dimensional hollow area of substantially triangular cross section between the surface and the legs. The carrier/case can function as a work platform. The pockets of the carrier/case of Atalay are inherently capable for holding knives and/or utensils. As to claims 10 and 39, Atalay discloses a handle (2) attached to the spine.

6. Claims 1, 7-11, 35-39 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (4,526,414). Jones discloses a carrying device/case (10) comprising a first planar leg (12) having at least one first leg pocket (66, 72, 74, 76), a second planar leg (14) having at least one second leg pocket (66, 72, 74, 76) and a spine (16) formed from a joinder of a side of the first planar leg and a side of the second planar leg. The carrier/case capable of standing on its two planar legs on the surface when the planar legs are separated so that the legs define a three dimensional hollow area of substantially triangular cross section between the surface and the legs. The carrier/case can function as a work platform. The pockets of the carrier/case of Jones are inherently capable for holding knives and/or utensils.

As to claims 7-9 and 36-38, Jones discloses a skid-resistant material (30) such as rubber attached to a bottom portions of the first and second planar legs.

As to claims 10 and 39, Jones discloses a handle (34) attached to the spine.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 3, 12, 17, 40 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (4,526,414). Jones discloses the carrying device/case (10) as above having all the limitations of the claims including the first/second planar legs comprises a, first/second leg wall (12, 14) and at least one of the at least one first/second leg pockets is situated on an exterior side of the first/second leg wall (Figure 5) and at least one of the at least one first/second leg pockets is situated on an interior side of the first/second leg wall (Figure 6). However, Jones fails to disclose at least one pocket being situated on the exterior and interior sides of the leg wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Figures 5 and 6 of Jones to modify the case so each planar leg comprises at least one pocket situated on the exterior and interior sides of the leg wall for holding more items. As to claim 3, Jones discloses each planar leg comprises a plurality of the at least one leg pockets.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (4,526,414) in view of Domingos (4,047,650). Jones discloses the carrying device/case (10) as above having all the limitations of the claims except for each pocket of the first and second leg pockets comprises stitching defined a boundary of the pockets. Domingos shows at least one pocket (12)

Art Unit: 3728

having stitching (19) defining a boundary of the pocket. It would have been obvious to one having ordinary skill in the art in view of Domingos to modify the pockets of Jones so each pocket comprises stitching defined a boundary of the pocket for better protecting the item.

*Allowable Subject Matter*

10. Claims 18-34 allowed.

11. Claims 4-6, 14-16 and 45-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.

lkb  
September 27, 2005



Luan K. Bui  
Primary Examiner